

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 92-206-T - ORDER NO. 92-825✓

IN RE: Application of Wills Trucking,) ORDER DENYING
Inc., 3185 Columbia Road, Richfield,) REHEARING
OH 44286, for a Class E Certificate) AND/OR
of Public Convenience and Necessity.) RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Rehearing and/or Reconsideration filed by Wills Trucking, Inc. (the Applicant, Wills, or the Company) on September 11, 1992. Wills asked that the Commission reconsider Order No. 92-661 in which we denied a Class E Certificate of Public Convenience and Necessity to the Company. Because of the reasoning stated in the following paragraphs, the Petition must be denied.

An examination of Wills' Petition for Reconsideration reveals numerous allegations of error on the part of the Commission in Order No. 92-661. The gravamen of the allegations is that the Commission should have given more credibility to Wills' witnesses than it did to the witnesses of Environmental Services Corporation (ESC) or of Laidlaw Environmental Services (Laidlaw). The Commission sits as a trier of facts, akin to a jury of experts. South Carolina Telephone & Telegraph Company v. Public Service Commission, 270 S.C. 590, 597, 244 S.E.2d 278, at 282, (1978). In this case, the Commission merely afforded the greater weight of the

evidence to the witnesses of ESC and Laidlaw to find that the public convenience and necessity was being served. This is a matter purely within the realm of the Commission's authority and discretion.

Further, this matter is governed by Regulation 103-134, which states in part, as follows:

1. For Common Carrier Authority.

A. An Application for a certificate or to amend a certificate to operate as a common carrier by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service, provided, however, if an intervenor shows or if the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. (Emphasis added.)

As the regulation shows, even if the Commission had found in Order No. 92-661 that the Applicant was fit, willing, and able, the Commission had the discretion to deny the Application, which the Commission did, since the Commission held that the public convenience and necessity is already being served.

The Applicant points to the case of Welch Moving and Storage v. The Public Service Commission of South Carolina, 391 S.E.2d 556 (S.C. 1990) as a case that requires the granting of the Certificate in the present case. It should be noted that a common sense reading of that case shows that if the intervenors provide either expert testimony or statistical surveys to indicate that the public convenience is being served on a statewide basis, the Commission may still deny the Application. (See, 391 S.E.2d at 557.) Clearly, in the case at bar, the Intervenor ESC and Laidlaw

presented expert testimony and evidence that the public convenience and necessity was being served on a statewide basis.

ESC presented the testimony of Pink G. Frady, Jr., its President. Despite the fact that Frady is a potential competitor of Wills, Frady was clearly an expert in the area under consideration by the Commission. Frady stated, on direct examination, that he had been personally involved in the hazardous waste business since about 1976 as a generator, since about 1980 as a disposer, and since 1988 as a transporter. TR. Vol. 2, Frady at 36. Frady further stated that Environmental Services Corporation provided its services on a statewide basis. TR. Vol. 2, Frady at 37. Frady was clearly an expert in the area. As was stated in the Order No. 92-661, Frady noted that most hazardous waste sites had been cleaned up and moved and that there were new regulations requiring waste generators to reduce the amount of hazardous wastes shipped off site. Therefore, Frady pointed out a severe reduction in the amount of hazardous waste being shipped from generating facilities.

Second, ESC presented the testimony of Donald G. Boan, Jr., a Certified Public Accountant (C.P.A.), employed by Bryson Industrial Services, another statewide carrier. TR. Vol. 2, Boan at 77. Boan testified that he had been in the hazardous waste transportation business for six years and that his business with regard to the hauling of hazardous waste had dropped dramatically. Bryson's fleet size dropped from 24 vehicles to 15 vehicles in one year. This was strong evidence that the business of transportation

of hazardous waste was dwindling.

Laidlaw Environmental Services presented the testimony of James T. Griffin, Director of the East Coast Transportation Group. Griffin is a recognized expert in the transportation of hazardous waste on a statewide basis. TR. Vol. 2, Griffin at 83. Griffin pointed out that the market for the hauling of hazardous waste is decreasing in South Carolina, due, in part, to waste minimization programs. Griffin opined that there are enough carriers at present to meet the needs of customers in the area, especially since much of the delay in the pick up of waste from shippers is due to problems in scheduling deliveries to disposal sites.

Upon consideration of this matter, the Commission believes that these witnesses provided expert testimony on a statewide basis with regard to the hauling and transportation of hazardous wastes and, therefore, meet the Welch criteria for relevant and probative evidence in determining whether the public convenience and necessity is being served.

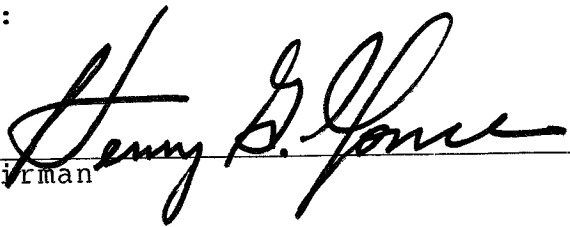
For the reasons as stated above, the Commission believes that the Petition for Rehearing and/or Reconsideration must be denied.

IT IS THEREFORE ORDERED THAT:

1. The Petition of Wills Trucking, Inc. for Rehearing and/or Reconsideration is denied.

2. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)